

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT DEREK LURCH JR.,

Plaintiff,

-against-

JOHN DOE POLICE OFFICER BADGE
NUMBER 8520; SERGEANT GORMAN;
POLICE OFFICER McKEEVER; POLICE
OFFICER DROZDIK; POLICE SERGEANT
NUNEZ; POLICE OFFICER BEN COSME;
POLICE OFFICER CALLOU; CENTRAL
BOOKINGS COURT PEN OFFICER,

Defendants.

23-CV-6704 (JGLC)

ORDER OF SERVICE

JESSICA G. L. CLARKE, United States District Judge:

Plaintiff, who is currently held in the Otis Bantum Correctional Center on Rikers Island, filed this *pro se* action asserting claims for damages.¹ The Court construes Plaintiff's complaint as asserting claims under 42 U.S.C. § 1983 and under state law. Plaintiff sues: (1) "John Doe," a Police Officer assigned to the New York City Police Department's ("NYPD") Transit Bureau's District 4 in Manhattan ("District 4"), and identified only by his/her badge number, "8520" ("Officer 8520"); (2) Police Sergeant Gorman, whom, Plaintiff alleges, is assigned to District 4; (3) Police Officer McKeever, whom, Plaintiff alleges, is assigned to District 4; (5) Police Officer Drozdik, whom, Plaintiff alleges, is assigned to District 4; (6) Police Sergeant Nunez, who appears to be assigned to the NYPD's 13th Precinct in Manhattan; (7) Police Officer Ben Cosme, who appears to be assigned to the 13th Precinct; (8) Police Officer Callou, who appears to be assigned to the 13th Precinct; and (9) "Central Bookings Court Pen Officers," who appear to be

¹ Plaintiff did not file this action while he was in custody.

unidentified officers of the New York City Department of Correction (“DOC”) assigned to the DOC’s Central Booking facility in Manhattan.

By order dated August 1, 2023, the court granted Plaintiff’s request to proceed *in forma pauperis* (“IFP”), that is, without prepayment of fees. The Court: (1) directs service on all of the identified defendants, including Officer 8520; and (2) directs the Corporation Counsel of the City of New York to provide to Plaintiff and to the Court the name of Officer 8520, as well as the names and, if appropriate, badge numbers of the unidentified defendants.

DISCUSSION

A. Service on the identified defendants

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* § 1915(d) (“The officers of the court shall issue and serve all process . . . in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP).

To allow Plaintiff to effect service on the identified defendants, including Officer 8520, through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for each of those defendants. The Clerk of Court is further instructed to issue summonses for those defendants, and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service on those defendants.

If the complaint is not served on those defendants within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff’s responsibility to request an extension of time for service).

Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

B. Officer 8520 and the unidentified defendants

Under *Valentin v. Dinkins*, a *pro se* litigant is entitled to assistance from the district court in identifying unidentified defendants. 121 F.3d 72, 76 (2d Cir. 1997). In the complaint, Plaintiff supplies sufficient information to permit the NYPD and the DOC to identify NYPD Officer 8520 and the unidentified defendants. While the Court has described NYPD Officer 8520 above, the unidentified defendants include those DOC employees who were present in the DOC's Central Booking facility in Manhattan, on or about July 23, 2023, and who, during that period, interacted with Plaintiff and Correction Lieutenant Foster in that facility when Plaintiff requested that his handcuffs be loosened. It is therefore ordered that the Corporation Counsel of the City of New York, who is the attorney for and agent of the NYPD and the DOC, must ascertain the name of NYPD Officer 8520, as well as the name and, if appropriate, badge number of each of the unidentified defendants whom Plaintiff seeks to sue here and the address where each of those defendants may be served.² **The Corporation Counsel must provide this information to Plaintiff and the Court within 60 days of the date of this order.**

Within 30 days of receiving this information, Plaintiff must file an amended complaint naming Officer 8520 by his/her true name, as well as naming the newly identified defendants. The amended complaint will replace, not supplement, the original complaint. An amended

² If any unidentified defendant is a current or former DOC employee or official, the Corporation Counsel should note in the response to this order that an electronic request for a waiver of service can be made under the e-service agreement for cases involving DOC defendants, rather than personal service at a DOC facility. If an unidentified defendant is not a current or former DOC employee or official, the Corporation Counsel must provide an address where that individual may be served.

complaint form that Plaintiff should complete is attached to this order. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, issue an order requesting that the newly identified defendants waive service of summonses.

C. New York Legal Assistance Group

Plaintiff may consult the legal clinic opened in this judicial district to assist people who are parties in civil cases, but who do not have lawyers. The clinic is operated by a private organization called the New York Legal Assistance Group (“NYLAG”); it is not part of, or operated by, the court (and, among other things, therefore, it cannot accept filings on behalf of the court, which must still be filed by a *pro se* party in the court’s Pro Se Intake Unit).

To receive limited-scope assistance from the clinic, Plaintiff may mail a signed retainer and intake form to the NYLAG Pro Se Clinic at 40 Foley Square, LL22, New York, New York 10007. Once the paperwork is received, the clinic will coordinate contact with the litigant. Once received, it may take up to two weeks for the clinic to contact the litigant. Copies of the clinic’s flyer, retainer, and intake form are attached to this order.

CONCLUSION

The Court directs the Clerk of Court to mail an information package to Plaintiff.

The Court also directs the Clerk of Court to: (1) issue summonses for Defendants “John Doe Police Officer Badge Number 8520,” Police Sergeant Gorman, Police Officer McKeever, Police Officer Drozdik, Police Sergeant Nunez, Police Officer Ben Cosme, and Police Officer Callou; (2) complete USM-285 forms with the addresses for those defendants; and (3) deliver all documents necessary to effect service on those defendants to the U.S. Marshals Service.

The Court further directs the Clerk of Court to mail a copy of this order and a copy of the complaint to the Corporation Counsel of the City of New York, at 100 Church Street, New York, New York 10007.

An amended complaint form is attached to this order.

A flyer, retainer, and intake form from NYLAG are also attached to this order.

SO ORDERED.

Dated: September 7, 2023
New York, New York

Jessica Clarke

JESSICA G. L. CLARKE
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

1. Police Officer Badge Number 8520
NYPD Transit Bureau District 4
Union Square Subway Station
14th Street/Union Square West
New York, New York 10003
2. Police Sergeant Gorman, Badge Number 1868
NYPD Transit Bureau District 4
Union Square Subway Station
14th Street/Union Square West
New York, New York 10003
3. Police Officer McKeever
NYPD Transit Bureau District 4
Union Square Subway Station
14th Street/Union Square West
New York, New York 10003
4. Police Officer Drozdik
NYPD Transit Bureau District 4
Union Square Subway Station
14th Street/Union Square West
New York, New York 10003
5. Police Sergeant Nunez
NYPD 13th Precinct
230 East 21st Street
New York, New York 10010-7460
6. Police Officer Ben Cosme
NYPD 13th Precinct
230 East 21st Street
New York, New York 10010-7460
7. Police Officer Callou
NYPD 13th Precinct
230 East 21st Street
New York, New York 10010-7460

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

CV _____
(Include case number if one has been assigned)

-against-

AMENDED

COMPLAINT

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you need more space, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section II.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. BASIS FOR JURISDICTION

Federal courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in federal court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one State sues a citizen of another State or nation, and the amount in controversy is more than \$75,000, is a diversity case. In a diversity case, no defendant may be a citizen of the same State as any plaintiff.

What is the basis for federal-court jurisdiction in your case?

- Federal Question**
- Diversity of Citizenship**

A. If you checked Federal Question

Which of your federal constitutional or federal statutory rights have been violated?

B. If you checked Diversity of Citizenship

1. Citizenship of the parties

Of what State is each party a citizen?

The plaintiff, _____, is a citizen of the State of
(Plaintiff's name)

(State in which the person resides and intends to remain.)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of _____.

If more than one plaintiff is named in the complaint, attach additional pages providing information for each additional plaintiff.

If the defendant is an individual:

The defendant, _____, is a citizen of the State of
(Defendant's name)

or, if not lawfully admitted for permanent residence in the United States, a citizen or subject of the foreign state of

If the defendant is a corporation:

The defendant, _____, is incorporated under the laws of
the State of _____

and has its principal place of business in the State of _____

or is incorporated under the laws of (foreign state) _____

and has its principal place of business in _____.

If more than one defendant is named in the complaint, attach additional pages providing information for each additional defendant.

II. PARTIES

A. Plaintiff Information

Provide the following information for each plaintiff named in the complaint. Attach additional pages if needed.

First Name	Middle Initial	Last Name
------------	----------------	-----------

Street Address

County, City	State	Zip Code
--------------	-------	----------

Telephone Number	Email Address (if available)
------------------	------------------------------

B. Defendant Information

To the best of your ability, provide addresses where each defendant may be served. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are the same as those listed in the caption. Attach additional pages if needed.

Defendant 1:

First Name	Last Name	
<hr/>		
Current Job Title (or other identifying information)		
<hr/>		
Current Work Address (or other address where defendant may be served)		
<hr/>		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	
<hr/>		
Current Job Title (or other identifying information)		
<hr/>		
Current Work Address (or other address where defendant may be served)		
<hr/>		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	
<hr/>		
Current Job Title (or other identifying information)		
<hr/>		
Current Work Address (or other address where defendant may be served)		
<hr/>		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name
------------	-----------

Current Job Title (or other identifying information)

Current Work Address (or other address where defendant may be served)

County, City	State	Zip Code
--------------	-------	----------

III. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and what each defendant personally did or failed to do that harmed you. Attach additional pages if needed.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

IV. RELIEF

State briefly what money damages or other relief you want the court to order.

V. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I agree to notify the Clerk's Office in writing of any changes to my mailing address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature	
First Name	Middle Initial	Last Name
Street Address		
County, City	State	Zip Code
Telephone Number	Email Address (if available)	

I have read the Pro Se (Nonprisoner) Consent to Receive Documents Electronically:

Yes No

If you do consent to receive documents electronically, submit the completed form with your complaint. If you do not consent, please do not attach the form.



Since 1990, NYLAG has provided free civil legal services to New Yorkers who cannot afford private attorneys.

Free Legal Assistance for Self-Represented Incarcerated Civil Litigants in Federal District Court

The NYLAG Legal Clinic for Pro Se Litigants in the Southern District of New York is a free legal clinic staffed by attorneys, law students, and paralegals to assist those who are representing themselves or planning to represent themselves, including incarcerated litigants, in civil lawsuits in the Southern District of New York federal court, excluding habeas cases. The clinic is not part of or run by the court.

Even if a litigant has consulted with Clinic staff, unless they retain other counsel and that counsel enters a notice of appearance, they remain unrepresented; are responsible for doing whatever is necessary in connection with the case; and must still submit all court papers to the Pro Se Intake Unit, located in Room 105 of the Daniel Patrick Moynihan Courthouse, 40 Foley Square, New York, New York, or by following the court's instructions for filing via email as a pro se litigant.

The Clinic Can:

- Assist with amending complaints and responding to motions to dismiss;
- Represent litigants for settlement purposes and, in limited circumstances, for depositions;
- Assist with written discovery;
- Recruit pro bono counsel for depositions and trial; and
- Assist with oppositions to summary judgment.

Clinic staff cannot assist with habeas cases or criminal matters.

NYLAG may also be unable to assist if it determines, in its professional legal judgement, that (i) you have refused to cooperate with the Clinic's counsel or follow the Clinic's advice; (ii) any assistance would be unreasonably difficult for NYLAG to carry out; or (iii) your case is or will become frivolous, unreasonable, groundless, or without merit.

Contacting the Clinic:

To contact the clinic and request a copy of our retainer, please call (212) 659-6190 and leave a message or write to us at the following address:

NYLAG Legal Clinic for Pro Se Litigants
Thurgood Marshall Federal Courthouse
Room LL22
40 Foley Square
New York, NY 10007

Please mail a signed retainer back to the clinic at the above address. Once the paperwork is received, clinic staff will contact you. It may take up to two weeks.

Disclaimer: The information contained herein is for informational purposes only and is not legal advice or a substitute for legal counsel, nor does it constitute advertising or a solicitation.



New York ■ Legal Assistance Group

**LEGAL CLINIC FOR PRO SE LITIGANTS IN THE
SOUTHERN DISTRICT OF NEW YORK**

LIMITED SCOPE LEGAL ASSISTANCE RETAINER AGREEMENT

You retain the New York Legal Assistance Group (NYLAG) to provide you with limited scope legal assistance through its Legal Clinic for Pro Se Litigants in the Southern District of New York (Clinic) under the terms set forth below.

I. LIMITS OF ASSISTANCE

The Clinic agrees to provide only limited scope legal assistance in connection with your matter.

This means that:

- You remain a self-represented (pro se) litigant and are responsible for all aspects of your case. NYLAG is not your attorney of record in this matter. In the event that you are or become a party to a case in the Southern District of New York or any other forum, NYLAG will not enter an appearance or otherwise act on your behalf without expressly agreeing to do so and entering into a separate signed agreement with you. NYLAG has no obligation to enter into any such agreement.
- NYLAG has sole discretion to determine the specific type of services provided. These services may include providing advice and counsel about your case, explaining court orders and procedures, reviewing and commenting on your drafts, assisting with drafting, and discussing strategy.
- This retainer covers an initial consultation only. NYLAG can stop assisting you with this matter at any time for any reason consistent with the New York Rules of Professional Conduct.
- NYLAG has not agreed to represent or assist you on any other matter in the future. If NYLAG does agree to any representation on another matter, then a separate signed retainer agreement will be necessary.
- You may request but are not guaranteed subsequent appointments. NYLAG will only provide assistance on subsequent appointments if it provides you with confirmation to you of such assistance, via email or otherwise, with such additional assistance governed by the terms of this agreement, including that the assistance is for that consultation only and that NYLAG has sole discretion to decide whether it will provide any additional future consultations. You are responsible for and must meet all deadlines in your case, regardless of whether you are able to have an appointment with the Clinic.

II. FREE ASSISTANCE, NON-ATTORNEY PROVIDERS, AND COMPETENCY

NYLAG does not charge for this assistance. You may be assisted by law students and/or paralegals under the supervision of an attorney consistent with the Rules of Professional Responsibility. NYLAG's assistance does not guarantee success or any particular outcome but that NYLAG will provide competent assistance.

III. TERMINATION OF ASSISTANCE

Your participation is entirely voluntary, and you are free to stop receiving NYLAG's limited scope assistance at any time. NYLAG may stop providing limited assistance at its sole discretion consistent with the New York Rules of Professional Conduct. If NYLAG chooses to stop providing limited assistance, it will provide notice by email, mail, or phone.

IV. CONFIDENTIALITY

NYLAG will take all reasonable steps to maintain any information you provide as confidential.

V. REVIEW AND CONSENT

By signing and writing today's date below, you indicate that you: have read and understand this agreement; consent to the terms of this agreement; and understand the possible risks and benefits of proceeding with limited scope assistance.

If you have questions or concerns, please indicate on this form and someone will arrange to speak with you.

Signature

Date

Once you have completed this form, please mail it and the completed demographic form to the New York Legal Assistance Group, Pro Se Clinic, 40 Foley Square, LL22, New York, NY 10007.

Name _____

Date of Birth _____

Facility _____

Identification # _____

Email (if available) _____

How did you hear about our clinic? (Circle One)

Pro Se Intake Office	Order/Letter from the Judge	Conference/Hearing with the Judge
Pro Se Information Package	Website	Friend/Family
Other _____		

Ethnicity (Circle One)

Asian/Pacific Islander	Hispanic	Caucasian
African American	Middle Eastern	Decline to Answer
African	Caribbean	
Native American	South Asian	

Education Level (Circle One)

8 th Grade or Less	GED	2-4 years of College/Vocational School
Some high school	College graduate	Decline to Answer
High school graduate	Graduate degree	

Gender: _____

SDNY Case Number: _____

Once you have completed this form, please mail it and the completed retainer to the New York Legal Assistance Group, Pro Se Clinic, 40 Foley Square, LL22, New York, NY 10007.